



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

applies equally to fire and marine insurance, where it is well settled that there is a right of subrogation. *Hall & Long v. Railroad Companies*, 13 Wall. (U. S.) 367; *Wunderlich v. C. & N. W. Ry. Co.*, 93 Wis. 132, 66 N. W. 1144; *The Frank G. Fowler*, 8 Fed. 360 (S. D. N. Y.). That the insured's original cause of action was statutory is immaterial. *Hart v. Western R. R.*, 13 Met. (Mass.) 99; *Caledonia Ins. Co. v. No. Pac. Ry. Co.*, 32 Mont. 46, 79 Pac. 544. It is true that no subrogation is allowed to life insurance companies. *Conn. Mutual Life Ins. Co. v. R. R. Co.*, 25 Conn. 265; *Ins. Co. v. Brame*, 95 U. S. 754. But employers' liability insurance is strictly a contract of indemnity, and therefore resembles, in this particular, fire and marine rather than life insurance. See RICHARDS, INSURANCE, 3 ed., § 478; SHELDON, SUBROGATION, 2 ed., § 239. The right of subrogation was recognized without difficulty in the analogous case of land-occupiers' liability insurance. *Wanamaker et al. v. Otis Elevator Co.*, 228 N. Y. 192, 126 N. E. 718. In fire insurance, subrogation is granted against defendants who are not negligent, provided the insured had an action. *Hall & Long v. Railroad Companies*, *supra*; *Hart v. Western R. R.*, *supra*. A fortiori it should be granted against the negligent defendant in the principal case. The obvious result of the court's decision is that the employer pays for insurance which inures to the benefit of the tortfeasor, in the event that the employee elects to claim compensation. The Circuit Court of Appeals has reached an opposite result. *Travelers' Ins. Co. v. Great Lakes Co.*, 184 Fed. 426 (6th Circ.).

MANDAMUS — ADEQUACY OF OTHER REMEDIES — INADEQUATE REMEDY BY APPEAL. — The respondent, as judge in the court below, refused to make a reasonable allowance to the relator for expenses in prosecuting her suit for separate maintenance, on the ground that he had no jurisdiction to make such award. This was error cognizable by appeal. The relator petitions for a writ of mandamus to compel the respondent to make such allowance. *Held*, that the writ issue. *State ex rel. Travis v. Maxwell*, 108 S. E. 418 (W. Va.).

Where a court refuses to act because it mistakenly decides it has no jurisdiction so to act, mandamus is a proper remedy. *State v. Smith*, 69 Ohio St. 196, 68 N. E. 1044; *Wheeling Bridge & T. Ry. Co. v. Paull*, 39 W. Va. 142, 19 S. E. 551. But it is well settled that mandamus to an inferior court will not issue where there is an adequate remedy by appeal. *Commonwealth v. Thomas*, 163 Pa. St. 446, 30 Atl. 206; *State v. Superior Court*, 20 Wash. 502, 55 Pac. 933; *Succession of Macarty*, 2 La. An. 979. A usual code provision is that the writ must issue "where there is not a plain, speedy, and adequate remedy in the ordinary course of law." See 1915 CAL. CODE CIV. PROC., § 1086; 1907 MONT. REV. CODE, § 7215; 1913, 2 S. D. COMP. LAWS, CODE CIV. PROC., § 765. Courts have occasionally been willing to find that delay or inconvenience makes appeal an inadequate remedy. *State v. Johnson*, 105 Wis. 90, 80 N. W. 1104; *Ketchum Coal Co. v. District Court*, 48 Utah, 342, 159 Pac. 737; *State v. District Court*, 126 Minn. 501, 148 N. W. 463. See 79 CENT. L. J. 295. But *cf.* *State v. Hadley*, 20 Wash. 520, 56 Pac. 29; *Ex Parte Whitney*, 13 Pet. (U. S.) 404. Particularly has this been true in Alabama and Michigan. *Ex Parte King*, 27 Ala. 387; *Dillon v. Judge*, 131 Mich. 574, 91 N. W. 1029; *T. & B. Co. R. Co. v. Iosco Circuit Judge*, 44 Mich. 479, 7 N. W. 65. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., §§ 186, 187. The West Virginia Court has also indicated a tendency to liberality. *People's National Bank v. Burdett*, 69 W. Va. 369, 71 S. E. 399. In the principal case it finds the remedy by appeal inadequate, because the relator needs funds now to prosecute her suit. *Ex Parte King*, *supra*. A just result is thus reached by stretching the principles of mandamus; but it would be better, instead of overworking and extending extraordinary remedies, to reach justice through a reformed appellate procedure.